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11 SHOP-VAC CORPORATION

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

14 RICHARD A. SILBER, an individual and on
15 behalf of all others similarly situated,

16 Plaintiff,

17 vs.

18 SHOP-VAC CORPORATION, a
19 Pennsylvania Corporation, and DOES 1
20 through 100, inclusive

21 Defendants.

CASE NO. 3:08CV00637-JLS (RBB)

**NOTICE OF MOTION AND MOTION FOR
ORDER DISMISSING PLAINTIFF'S
COMPLAINT (FRCP 12(B)(6))**

DATE: Thursday, September 4, 2008

TIME: 1:30 PM

COURTROOM: 6

Hon. Janis L. Sammartino

22 TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE THAT ON Thursday, September 4, 2008 at 1:30 PM or as soon
24 thereafter as the matter may be heard in Courtroom 6 of the above-entitled Court, located at 940
25 Front Street, San Diego, California, Defendant SHOP-VAC CORPORATION will move the Court
26 pursuant to Rule 12(b)(6), Fed. R. Civ. Pro. for an order Dismissing Plaintiff's First Amended
27 Complaint for failure to state a claim upon which relief can be granted. Specifically, Plaintiff fails to
28 plead sufficient facts to confer standing pursuant to the Consumer Legal Remedies Act (Cal.Civil

Code § 1750, et seq.), California's Unfair Competition Law (Cal. Business & Professions Code § 17200, et seq., and California Business & Professions Code § 17533.7. Further, Plaintiff failed to plead facts sufficient to confer standing to bring the action as a class representative, i.e., he has not stated facts that demonstrate that an ascertainable class exists with a well-defined community of interest among the class members and he has not stated facts that demonstrate that his interests are aligned with those of the class members.

This Motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities filed herewith, the pleadings on file with the Court, and such argument as may be presented at the hearing on the Motion.

Dated: July 8, 2008

ARMSTRONG TEASDALE LLP

By: /s/ Kevin J. Senn

Attorney for Defendant SHOP-VAC
CORPORATION
Email: ksenn@armstrongteasdale.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically this **8th day of July, 2008** with the Clerk of the USDC Southern District of California (San Diego) to be served by operation of the Court's ECF electronic filing system upon the following:

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